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ENGROSSED SUBSTITUTE HOUSE BILL 1064

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State of Washington

55th Legislature

1997 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives L. Thomas, Wolfe, Dyer and Mason; by request of Insurance Commissioner)

Read first time 01/29/97.

1 AN ACT Relating to the financial and reporting requirements of  
2 health care service contractors and health maintenance organizations;  
3 amending RCW 48.44.035, 48.44.037, 48.44.095, 48.46.080, and 48.46.235;  
4 adding a new section to chapter 48.44 RCW; and adding a new section to  
5 chapter 48.46 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 48.44.035 and 1990 c 120 s 3 are each amended to read  
8 as follows:

9 (1) For purposes of this section only, "limited health care  
10 service" means dental care services, vision care services, mental  
11 health services, chemical dependency services, pharmaceutical services,  
12 podiatric care services, and such other services as may be determined  
13 by the commissioner to be limited health services, but does not include  
14 hospital, medical, surgical, emergency, or out-of-area services except  
15 as those services are provided incidentally to the limited health  
16 services set forth in this subsection.

17 (2) For purposes of this section only, a "limited health care  
18 service contractor" means a health care service contractor that offers  
19 one and only one limited health care service.

1       (3) Except as provided in subsection (4) of this section, every  
2 limited health care service contractor must have and maintain a minimum  
3 net worth of three hundred thousand dollars.

4       (4) A limited health care service contractor registered before the  
5 effective date of this act that, on the effective date of this act, has  
6 a minimum net worth equal to or greater than that required by  
7 subsection (3) of this section must continue to have and maintain the  
8 minimum net worth required by subsection (3) of this section. A limited  
9 health care service contractor registered before the effective date of  
10 this act that, on the effective date of this act, does not have the  
11 minimum net worth required by subsection (3) of this section must have  
12 and maintain a minimum net worth of:

13       (a) Thirty-five percent of the amount required by subsection (3) of  
14 this section by December 31, 1997;

15       (b) Seventy percent of the amount required by subsection (3) of  
16 this section by December 31, 1998; and

17       (c) One hundred percent of the amount required by subsection (3) of  
18 this section by December 31, 1999.

19       (5) For all limited health care service contractors that have had  
20 a certificate of registration for less than three years, their  
21 uncovered expenditures shall be either insured or guaranteed by a  
22 foreign or domestic carrier admitted in the state of Washington or by  
23 another carrier acceptable to the commissioner. All such contractors  
24 shall also deposit with the commissioner one-half of one percent of  
25 their projected premium for the next year in cash, approved surety  
26 bond, securities, or other form acceptable to the commissioner.

27       (~~(4)~~) (6) For all limited health care service contractors that  
28 have had a certificate of registration for three years or more, their  
29 uncovered expenditures shall be assured by depositing with the  
30 insurance commissioner twenty-five percent of their last year's  
31 uncovered expenditures as reported to the commissioner and adjusted to  
32 reflect any anticipated increases or decreases during the ensuing year  
33 plus an amount for unearned prepayments; in cash, approved surety bond,  
34 securities, or other form acceptable to the commissioner. Compliance  
35 with subsection (~~(3)~~) (5) of this section shall also constitute  
36 compliance with this requirement.

37       (~~(5)~~) (7) Limited health service contractors need not comply with  
38 RCW 48.44.030 or 48.44.037.

1       **Sec. 2.** RCW 48.44.037 and 1990 c 120 s 4 are each amended to read  
2 as follows:

3       (1)~~((a))~~ Except as provided in subsection (2) of this section,  
4 every health care service contractor must have ~~((a))~~ and maintain a  
5 minimum net worth ~~((of one million five hundred thousand dollars at the~~  
6 ~~time of initial registration under this chapter and a net worth of one~~  
7 ~~million dollars thereafter. The commissioner is authorized to~~  
8 ~~establish standards for reviewing a health care service contractor's~~  
9 ~~financial integrity when, for any reason, its net worth is reduced~~  
10 ~~below one million dollars. When satisfied that such a health care~~  
11 ~~service contractor is financially stable and not hazardous to its~~  
12 ~~enrolled participants, the commissioner may waive compliance with the~~  
13 ~~one million dollar net worth standard otherwise required by this~~  
14 ~~subsection. When such a health care service contractor's net worth~~  
15 ~~falls below five hundred thousand dollars, the commissioner shall~~  
16 ~~require that net worth be increased to one million dollars.~~

17       ~~(b) A health care service contractor who fails to maintain the~~  
18 ~~required net worth must cure that defect in compliance with an order of~~  
19 ~~the commissioner rendered in conformity with rules adopted under~~  
20 ~~chapter 34.05 RCW. The commissioner may take appropriate action to~~  
21 ~~assure that the continued operation of the health care service~~  
22 ~~contractor will not be hazardous to its enrolled participants))~~ equal  
23 to the greater of:

24       (a) Three million dollars; or

25       (b) Two percent of the annual premium earned, as reported on the  
26 most recent annual financial statement filed with the commissioner, on  
27 the first one hundred fifty million dollars of premium and one percent  
28 of the annual premium on the premium in excess of one hundred fifty  
29 million dollars.

30       (2) A health care service contractor registered before ~~((June 7,~~  
31 ~~1990,))~~ the effective date of this act that, on the effective date of  
32 this act, has a minimum net worth equal to or greater than that  
33 required by subsection (1) of this section must continue to have and  
34 maintain the minimum net worth required by subsection (1) of this  
35 section. A health care service contractor registered before the  
36 effective date of this act that, on the effective date of this act,  
37 does not have the minimum net worth required by subsection (1) of this  
38 section must have and maintain a minimum net worth of:

1 (a) (~~Twenty five percent of the amount required by subsection (1)~~  
2 ~~of this section by December 31, 1990~~) The amount required immediately  
3 prior to the effective date of this act until December 31, 1997;

4 (b) Fifty percent of the amount required by subsection (1) of this  
5 section by December 31, (~~1991~~) 1997;

6 (c) Seventy-five percent of the amount required by subsection (1)  
7 of this section by December 31, (~~1992~~) 1998; and

8 (d) One hundred percent of the amount required by subsection (1) of  
9 this section by December 31, (~~1993~~) 1999.

10 (3)(a) In determining net worth, no debt shall be considered fully  
11 subordinated unless the subordination is in a form acceptable to the  
12 commissioner. An interest obligation relating to the repayment of a  
13 subordinated debt must be similarly subordinated.

14 (b) The interest expenses relating to the repayment of a fully  
15 subordinated debt shall not be considered uncovered expenditures.

16 (c) A subordinated debt incurred by a note meeting the requirement  
17 of this section, and otherwise acceptable to the commissioner, shall  
18 not be considered a liability and shall be recorded as equity.

19 (4) Every health care service contractor shall, when determining  
20 liabilities, include an amount estimated in the aggregate to provide  
21 for any unearned premium and for the payment of all claims for health  
22 care expenditures which have been incurred, whether reported or  
23 unreported, which are unpaid and for which the organization is or may  
24 be liable, and to provide for the expense of adjustment or settlement  
25 of the claims.

26 Liabilities shall be computed in accordance with regulations  
27 adopted by the commissioner upon reasonable consideration of the  
28 ascertained experience and character of the health care service  
29 contractor.

30 (5) All income from reserves on deposit with the commissioner shall  
31 belong to the depositing health care service contractor and shall be  
32 paid to it as it becomes available.

33 (6) Any funded reserve required by this chapter shall be considered  
34 an asset of the health care service contractor in determining the  
35 organization's net worth.

36 (7) A health care service contractor that has made a securities  
37 deposit with the commissioner may, at its option, withdraw the  
38 securities deposit or any part thereof after first having deposited or  
39 provided in lieu thereof an approved surety bond, a deposit of cash or

1 securities, or any combination of these or other deposits of equal  
2 amount and value to that withdrawn. Any securities and surety bond  
3 shall be subject to approval by the commissioner before being  
4 substituted.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.44 RCW  
6 to read as follows:

7 (1) For purposes of this section:

8 (a) "Domestic health care service contractor" means a health care  
9 service contractor formed under the laws of this state; and

10 (b) "Foreign health care service contractor" means a health care  
11 service contractor formed under the laws of the United States, of a  
12 state or territory of the United States other than this state, or of  
13 the District of Columbia.

14 (2) If the minimum net worth of a domestic health care service  
15 contractor falls below the minimum net worth required by this chapter,  
16 the commissioner shall at once ascertain the amount of the deficiency  
17 and serve notice upon the domestic health care service contractor to  
18 cure the deficiency within ninety days after that service of notice.

19 (3) If the deficiency is not cured, and proof thereof filed with  
20 the commissioner within the ninety-day period, the domestic health care  
21 service contractor shall be declared insolvent and shall be proceeded  
22 against as authorized by this code, or the commissioner shall,  
23 consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the  
24 registration of the domestic health care service contractor as being  
25 hazardous to its subscribers and the people in this state.

26 (4) If the deficiency is not cured the domestic health care service  
27 contractor shall not issue or deliver any individual or group contract  
28 after the expiration of the ninety-day period.

29 (5) If the minimum net worth of a foreign health care service  
30 contractor falls below the minimum net worth required by this chapter,  
31 the commissioner shall, consistent with chapters 48.04 and 34.05 RCW,  
32 suspend or revoke the foreign health care service contractor's  
33 registration as being hazardous to its subscribers or the people in  
34 this state.

35 **Sec. 4.** RCW 48.44.095 and 1993 c 492 s 295 are each amended to  
36 read as follows:

1 (1) Every health care service contractor shall annually, before the  
2 first day of March, file with the commissioner a statement verified by  
3 at least two of the principal officers of the health care service  
4 contractor showing its financial condition as of the last day of the  
5 preceding calendar year. The statement shall be in such form as is  
6 furnished or prescribed by the commissioner. The commissioner may for  
7 good reason allow a reasonable extension of the time within which such  
8 annual statement shall be filed.

9 (2) In addition to the requirements of subsection (1) of this  
10 section, every health care service contractor that is registered in  
11 this state shall annually, on or before March 1st of each year, file  
12 with the national association of insurance commissioners a copy of its  
13 annual statement, along with those additional schedules as prescribed  
14 by the commissioner for the preceding year. The information filed with  
15 the national association of insurance commissioners shall be in the  
16 same format and scope as that required by the commissioner and shall  
17 include the signed jurate page and the actuarial certification. Any  
18 amendments and addendums to the annual statement filing subsequently  
19 filed with the commissioner shall also be filed with the national  
20 association of insurance commissioners.

21 (3) Coincident with the filing of its annual statement and other  
22 schedules, each health care service contractor shall pay a reasonable  
23 fee directly to the national association of insurance commissioners in  
24 an amount approved by the commissioner to cover the costs associated  
25 with the analysis of the annual statement.

26 (4) Foreign health care service contractors that are domiciled in  
27 a state that has a law substantially similar to subsection (2) of this  
28 section are considered to be in compliance with this section.

29 (5) In the absence of actual malice, members of the national  
30 association of insurance commissioners, their duly authorized  
31 committees, subcommittees, and task forces, their delegates, national  
32 association of insurance commissioners employees, and all other persons  
33 charged with the responsibility of collecting, reviewing, analyzing,  
34 and dissimilating the information developed from the filing of the  
35 annual statement shall be acting as agents of the commissioner under  
36 the authority of this section and shall not be subject to civil  
37 liability for libel, slander, or any other cause of action by virtue of  
38 their collection, review, analysis, or dissimulation of the data and  
39 information collected for the filings required under this section.

1       (6) The commissioner may suspend or revoke the certificate of  
2 registration of any health care service contractor failing to file its  
3 annual statement or pay the fees when due or during any extension of  
4 time therefor which the commissioner, for good cause, may grant.

5       **Sec. 5.** RCW 48.46.080 and 1993 c 492 s 296 are each amended to  
6 read as follows:

7       (1) Every health maintenance organization shall annually, before  
8 the first day of March, file with the commissioner a statement verified  
9 by at least two of the principal officers of the health maintenance  
10 organization showing its financial condition as of the last day of the  
11 preceding calendar year.

12       (2) Such annual report shall be in such form as the commissioner  
13 shall prescribe and shall include:

14       (a) A financial statement of such organization, including its  
15 balance sheet and receipts and disbursements for the preceding year,  
16 which reflects at a minimum;

17       (i) All prepayments and other payments received for health care  
18 services rendered pursuant to health maintenance agreements;

19       (ii) Expenditures to all categories of health care facilities,  
20 providers, insurance companies, or hospital or medical service plan  
21 corporations with which such organization has contracted to fulfill  
22 obligations to enrolled participants arising out of its health  
23 maintenance agreements, together with all other direct expenses  
24 including depreciation, enrollment, and commission; and

25       (iii) Expenditures for capital improvements, or additions thereto,  
26 including but not limited to construction, renovation, or purchase of  
27 facilities and capital equipment;

28       (b) The number of participants enrolled and terminated during the  
29 report period. Every employer offering health care benefits to their  
30 employees through a group contract with a health maintenance  
31 organization shall furnish said health maintenance organization with a  
32 list of their employees enrolled under such plan;

33       (c) The number of doctors by type of practice who, under contract  
34 with or as an employee of the health maintenance organization,  
35 furnished health care services to consumers during the past year;

36       (d) A report of the names and addresses of all officers, directors,  
37 or trustees of the health maintenance organization during the preceding  
38 year, and the amount of wages, expense reimbursements, or other

1 payments to such individuals for services to such organization. For  
2 partnership and professional service corporations, a report shall be  
3 made for partners or shareholders as to any compensation or expense  
4 reimbursement received by them for services, other than for services  
5 and expenses relating directly for patient care;

6 (e) Such other information relating to the performance of the  
7 health maintenance organization or the health care facilities or  
8 providers with which it has contracted as reasonably necessary to the  
9 proper and effective administration of this chapter, in accordance with  
10 rules and regulations; and

11 (f) Disclosure of any financial interests held by officers and  
12 directors in any providers associated with the health maintenance  
13 organization or any provider of the health maintenance organization.

14 (3) The commissioner may for good reason allow a reasonable  
15 extension of the time within which such annual statement shall be  
16 filed.

17 (4) In addition to the requirements of subsections (1) and (2) of  
18 this section, every health maintenance organization that is registered  
19 in this state shall annually, on or before March 1st of each year, file  
20 with the national association of insurance commissioners a copy of its  
21 annual statement, along with those additional schedules as prescribed  
22 by the commissioner for the preceding year. The information filed with  
23 the national association of insurance commissioners shall be in the  
24 same format and scope as that required by the commissioner and shall  
25 include the signed jurate page and the actuarial certification. Any  
26 amendments and addendums to the annual statement filing subsequently  
27 filed with the commissioner shall also be filed with the national  
28 association of insurance commissioners.

29 (5) Coincident with the filing of its annual statement and other  
30 schedules, each health maintenance organization shall pay a reasonable  
31 fee directly to the national association of insurance commissioners in  
32 an amount approved by the commissioner to cover the costs associated  
33 with the analysis of the annual statement.

34 (6) Foreign health maintenance organizations that are domiciled in  
35 a state that has a law substantially similar to subsection (4) of this  
36 section are considered to be in compliance with this section.

37 (7) In the absence of actual malice, members of the national  
38 association of insurance commissioners, their duly authorized  
39 committees, subcommittees, and task forces, their delegates, national

1 association of insurance commissioners employees, and all other persons  
2 charged with the responsibility of collecting, reviewing, analyzing,  
3 and dissimilating the information developed from the filing of the  
4 annual statement shall be acting as agents of the commissioner under  
5 the authority of this section and shall not be subject to civil  
6 liability for libel, slander, or any other cause of action by virtue of  
7 their collection, review, analysis, or dissimulation of the data and  
8 information collected for the filings required under this section.

9 (8) The commissioner may suspend or revoke the certificate of  
10 registration of any health maintenance organization failing to file its  
11 annual statement or pay the fees when due or during any extension of  
12 time therefor which the commissioner, for good cause, may grant.

13 ((+5)) (9) No person shall knowingly file with any public official  
14 or knowingly make, publish, or disseminate any financial statement of  
15 a health maintenance organization which does not accurately state the  
16 health maintenance organization's financial condition.

17 **Sec. 6.** RCW 48.46.235 and 1990 c 119 s 5 are each amended to read  
18 as follows:

19 (1) Except as provided in subsection (2) of this section, every  
20 health maintenance organization must have and maintain a minimum net  
21 worth equal to the greater of:

22 (a) ((One)) Three million dollars; or

23 (b) Two percent of annual premium ((revenues)) earned as reported  
24 on the most recent annual financial statement filed with the  
25 commissioner on the first one hundred fifty million dollars of premium  
26 and one percent of annual premium on the premium in excess of one  
27 hundred fifty million dollars; or

28 (c) An amount equal to the sum of three months' uncovered  
29 expenditures as reported on the most recent financial statement filed  
30 with the commissioner.

31 (2) A health maintenance organization registered before ((June 7,  
32 1990,)) the effective date of this act that, on the effective date of  
33 this act, has a minimum net worth equal to or greater than that  
34 required by subsection (1) of this section must continue to have and  
35 maintain the minimum net worth required by subsection (1) of this  
36 section. A health maintenance organization registered before the  
37 effective date of this act that, on the effective date of this act,

1 does not have the minimum net worth required by subsection (1) of this  
2 section must have and maintain a minimum net worth of:

3 (a) (~~Twenty five percent of the amount required by subsection (1)~~  
4 ~~of this section by December 31, 1990~~) The amount required immediately  
5 prior to the effective date of this act until December 31, 1997;

6 (b) Fifty percent of the amount required by subsection (1) of this  
7 section by December 31, (~~1991~~) 1997;

8 (c) Seventy-five percent of the amount required by subsection (1)  
9 of this section by December 31, (~~1992~~) 1998; and

10 (d) One hundred percent of the amount required by subsection (1) of  
11 this section by December 31, (~~1993~~) 1999.

12 (3)(a) In determining net worth, no debt shall be considered fully  
13 subordinated unless the subordination clause is in a form acceptable to  
14 the commissioner. An interest obligation relating to the repayment of  
15 a subordinated debt must be similarly subordinated.

16 (b) The interest expenses relating to the repayment of a fully  
17 subordinated debt shall not be considered uncovered expenditures.

18 (c) A subordinated debt incurred by a note meeting the requirement  
19 of this section, and otherwise acceptable to the commissioner, shall  
20 not be considered a liability and shall be recorded as equity.

21 (4) Every health maintenance organization shall, when determining  
22 liabilities, include an amount estimated in the aggregate to provide  
23 for any unearned premium and for the payment of all claims for health  
24 care expenditures that have been incurred, whether reported or  
25 unreported, which are unpaid and for which such organization is or may  
26 be liable, and to provide for the expense of adjustment or settlement  
27 of such claims.

28 Such liabilities shall be computed in accordance with rules  
29 promulgated by the commissioner upon reasonable consideration of the  
30 ascertained experience and character of the health maintenance  
31 organization.

32 NEW SECTION. Sec. 7. A new section is added to chapter 48.46 RCW  
33 to read as follows:

34 (1) For purposes of this section:

35 (a) "Domestic health maintenance organization" means a health  
36 maintenance organization formed under the laws of this state; and

37 (b) "Foreign health maintenance organization" means a health  
38 maintenance organization formed under the laws of the United States, of

1 a state or territory of the United States other than this state, or of  
2 the District of Columbia.

3 (2) If the minimum net worth of a domestic health maintenance  
4 organization falls below the minimum net worth required by this  
5 chapter, the commissioner shall at once ascertain the amount of the  
6 deficiency and serve notice upon the domestic health maintenance  
7 organization to cure the deficiency within ninety days after that  
8 service of notice.

9 (3) If the deficiency is not cured, and proof thereof filed with  
10 the commissioner within the ninety-day period, the domestic health  
11 maintenance organization shall be declared insolvent and shall be  
12 proceeded against as authorized by this code or the commissioner shall,  
13 consistent with chapters 48.04 and 34.05 RCW, suspend or revoke the  
14 registration of the domestic health maintenance organization as being  
15 hazardous to its subscribers and the people in this state.

16 (4) If the deficiency is not cured the domestic health maintenance  
17 organization shall not issue or deliver any health maintenance  
18 agreement after the expiration of the ninety-day period.

19 (5) If the minimum net worth of a foreign health maintenance  
20 organization falls below the minimum net worth required by this  
21 chapter, the commissioner shall, consistent with chapters 48.04 and  
22 34.05 RCW, suspend or revoke the foreign health maintenance  
23 organization's registration as being hazardous to its subscribers,  
24 enrollees, or the people in this state.

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